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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,245	02/12/2002	Rakesh Mathur	9D-HR-19761	5065

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EXAMINER

MARSH, STEVEN M

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 10/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



Office Action Summary

Application No.

10/074,245

Applicant(s)

MATHUR ET AL.

Examiner

Steven M Marsh

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-18,20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-18, 20, and 21 is/are allowed.
- 6) ☒ Claim(s) 1 and 3-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is the fifth office action for U.S. Application 10/074,245 for a Spill Proof Shelf Assembly Method and Structure filed by Rakesh Mathur et al. on February 12, 2002. Claims 2 and 19 have been canceled.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 1, 2004 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 3-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites the limitation "the structure" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

Claims 1, 3-7 and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Falk. Falk discloses a plurality of side supports (22) configured to support a shelf whereby each side support comprises a ledge comprising a clearance portion (formed by the upper portion of grooves 44). There is a plurality of support members (36) configured to rigidly connect the side supports and a plurality of gussets (the lower portion of groove 44 that extends inward) extending inwardly from each of the side supports. A gusset tab (45) extends upwardly from each gusset and is configured to contact a portion of the shelf blocking forward movement, while being aligned substantially vertically below the horizontal aperture of the clearance portion. The shelf has an integral forward stop tab (51) that extends laterally outward from the shelf and the gussets and gusset tabs are integral. The clearance portion has a width that provides a clearance for the forward tab. The shelf is assembled by providing a shelf; providing at least one side support; and slidably coupling the shelf to the side supports. The shelf is assembled by providing a shelf, providing at least one side support, and slidably coupling the shelf to the side supports.

Claim Rejections - 35 USC § 103

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Falk in view of Kolbe et al. Falk does not disclose a rear portion with a width greater than a width of the forward portion. Kolbe et al. discloses a system for limiting outward movement of a slide-out shelf. There is a plurality of side supports (23 and 24) with

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ledges (28 and the portion under it) that have a clearance portion, configured to support the shelf and there are support members (26) configured to rigidly connect the side members. The shelf is configured extends outward in a first direction and retracts inward in a second direction opposite the first direction. The ledge of the shelf appears to be wider at the rear portion the front portion (see fig. 2), flaring outward at two locations. Each ledge also has clearance portions (formed throughout the side support under the ledge 28) for supporting the shelf. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have utilized side supports shaped like the supports taught by Kolbe et al., on the invention taught by Falk, for the purpose of providing additional stability in the rear of the support.

Allowable Subject Matter

Claims 12-18, 20, and 21 are allowed. The following is a statement of reasons for the indication of allowable subject matter: The prior art does not disclose a shelf with a first side and forward and rear tabs extending respective first and second distances from the first side, whereby the first distance is less than the second distance, and a first shelf side support with a laterally projecting ledge for sliding engagement with the shelf, whereby the ledge has a rear portion sufficient for retaining the rear tab, a forward portion with a second width less than the width of the rear portion and providing a clearance for the rear and forward tab, and whereby the clearance has a third width providing a clearance for the forward tab, wherein the side support has a plurality of support members rigidly connecting the first shelf side support to a second shelf side

support and configured to contact the forward tab when the shelf is in a first extended position.

Response to Arguments

Applicant's arguments filed September 1, 2004 have been fully considered but they are not persuasive. In response to applicant's arguments, the recitation "a system for limiting outward movement of a slide-out shelf" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Applicant also argues that Falk does not describe a gusset tab aligned substantially vertically below a horizontal aperture of the clearance portion, but describes a groove extending along the side support. The groove is a "horizontal aperture" and the gusset tab is substantially vertically below it.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does

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not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Kolbe teaches a slide out shelf assembly for refrigerators. Falk also teaches a shelf assembly for refrigerators and it would have been obvious to one of ordinary skill in the art at the time of the present invention to have utilized the teaching of Kolbe to provide additional support for the shelf assembly taught by Falk, as discussed above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Marsh whose telephone number is (703) 305-0098. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30 PM. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Shh

Steven M. Marsh

September 28, 2004



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